KERAJAAN MALAYSIA

v.

HO TUNG INDUSTRY & REALTY HOLDINGS SDN. BHD.

HIGH COURT, IPOH
DATO' P. S. GILL J.
[CIVIL SUIT NO. 22-204-92]
14 APRIL 1994

REVENUE LAW: Income tax assessment - Summary judgment for plaintiff allowed by Registrar against defendant - Statement of defence inter alia pleads tax assessment is incorrect as sale of land not complete and monies not received - Section 106(3) Income Tax Act - Whether any triable issue - Jurisdiction - Whether jurisdiction to entertain any plea that tax is excessive, incorrectly assessed or incorrectly increased - Dispute on amount of tax - Remedy available to defendant - Whether should be by way of Inland Revenue - Distinction between s. 106(3) and s. 142(1) of Income Tax Act.

This was an appeal by the defendant/appellant against the decision of the learned Senior Assistant Registrar of the High Court, Ipoh who granted summary judgment to the plaintiff against the defendant on tax assessment.

Held:

[1] A tax payer who wishes to dispute the amount of tax on the ground that it is excessive, or incorrectly assessed, under appeal, or incorrectly increased, has to file an appeal to the Special Commissioners of the Inland Revenue.

[2] In the circumstances, leave to sign final judgment was confirmed and this appeal was dismissed with costs.

[Appeal dismissed with costs].

Cases referred to:

Government of Malaysia v. Abdul Rahman [1975] 1 MLJ 276 ***(foll)***

Sun Man Tobacco Co. ltd. v. Government of Malaysia (unreported) ***(foll)***

Legislation referred to:

Income Tax Act 1967, ss. 103(4), (5), (5A), 106(3), 142(1)

For the plaintiffs - Azlaily binti Abd. Rahman, Federal Counsel

For the defendants - A.S. Lua; M/s. Soo Thien Ming & Shahrizat

JUDGMENT

P.S. Gill J:

This is an appeal by the defendant/appellant against the decision of the learned Senior Assistant Registrar of the High Court of Ipoh, in allowing the plaintiff's claim for summary judgment.

The plaintiffs, the Government of Malayasia, instituted a suit against the defendants for the recovery of the sum of RM14,456.45, being the amount due for Income Tax Assesssment for the year 1984, inclusive of additional income taxes, for failure to pay within the specified times. According to the plaintiffs, the notice of assessment for the said year was duly posted, and since it was not returned, it was deemed to have been properly served. The defendants had failed to pay the said sum within 30 days after service of the notice of assessment, and an additional 10% increase and 5% increase was respectively added to the tax pursuant to the provision of s. 103 (4) and 103 (5A) of the Income Tax Act 1967.

The defendants, in their defence, contend that the tax assessment is incorrect simply because the plaintiffs in their assessment of tax due from the defendants had taken into account the sale of a piece of land, totalling RM211,770 when in fact, the sale was not completed and the monies not received. According to the defendants, civil suits in respect of this said land, have been filed in the High Courts of Kuala Lumpur and Ipoh respectively.

The defendants further stated, the plaintiff had failed to take into account in its assessment, the company lossess totalling RM1,084,244.95.

The plaintiffs reiterate their claim that the income tax assessment for the year 1984 was fair, and the increases in interest were justified under s. 103(4) and s. 103(5A) of the Income Tax Act 1967.

The plaintiff's Counsel further contended that by virture of s. 106(3) of the Income Tax Act, the Court had no jurisdiction to entertain any plea on the premise that the amount of tax sought to be recovered is excessive, incorrectly assessed or incorrectly increased under s. 103(4), (5) and (5A) of the Income Tax Act. It was further contended by Counsel for the plaintiffs that any dispute on the amount of tax sought should be done by way of appeal to Special Commissioners of the Inland Revenue.

The defence Counsel submitted further that there was a triable issue here, as the sale and purchase of a land, that was subject to tax assessment, was not completed, and therefore no tax is payable.

She further stated that there is an apparent conflict between the provisions of s. 106(3) and s. 142(1) of the Income Tax Act. Section 142(1) of the Income Tax Act reads as follows:

> 142. (1) In a suit under s. 106 the production of a certificate signed by the Director General giving the name and address of the defendant and the amount of tax due from him shall be sufficient evidence of the amount so due and sufficient authority for the Court to give judgment for that amount.

It was the defence Counsel's contention that the phrase "suit under s. 106" in s. 142 implied that the Court had jurisdiction to hear matters pertaining to s. 106, including that of incorrectly assessed taxes. With respect this view is not tenable and is without merit.

Plaintiff's Counsel in her rebuttal, stressed that there was no conflict between s. 106 and s. 142 of the Income Tax Act. She referred to the Court the case of *Government of Malaysia v. Abdul Rahman* [1975] 1 MLJ 276 which in her view fortified her submission on this point.

In conclusion, I wish to state that I am in entire agreement with the authorities cited by the plaintiffs' Counsel namely *Government of Malaysia v. Abdul Rahman [*1975] 1 MLJ 276 and the Federal Court decision in *Sun Man Tobacco Co. Ltd. v. Government of Malaysia* wherein it was held that the Court was right in giving leave to the plaintiffs to sign final judgment. It is my view that if a tax payer wishes to dispute the amount of tax on the ground that it is excessive, or incorrectly assessed, under appeal, or incorrectly increased, the proper procedure for him is to file an appeal to the Special Commissioners of the Inland Revenue.

In the circumstances this appeal is dismissed and the leave to sign final judgment confirmed with costs.

LEE CHONG AH @ LEE CHONG AT

v.

CHEONG CHEE @ CHEONG CHEE HANG & 2 ORS.

HIGH COURT, IPOH
DATO' P.S. GILL J.
[CIVIL SUIT NO. 24-436-86]
6 MAY 1994

PRACTICE & PROCEDURE: Want of prosecution - Application to dismiss suit for not setting down case for trial within 60 days from date of order of Court - Delay of 6 $^1/_2$ years - Whether inordinate and inexcusable.

This was an application by the defendants to dismiss the plaintiff's suit for want of prosecution and that the counterclaim made by the defendants against the plaintiffs be allowed.

Held:

[1] On the evidence as stated in the affidavits before this Court, there has been no valid excuse for the delay of more than 6 $^1/_2$ years to enter the action for trial.

[2] The delay has an adverse effect on the defendant. The prejudice to the defendant is not merely confined to the possibilities of not having a fair trial, or in the form of failing memory of the witnesses, or lack of documents, and non-availability of witnesses, but also the agony of having the suit hanging over his head for the last 6 $^1/_2$ years.

[3] In the circumstances, the plaintiff has been guilty of inordinate and inexcusable delay. The defendants' application to dismiss this suit for want of prosecution was allowed.

[Defendants' application to dismiss plaintiff's suit for want of prosecution allowed].

Cases referred to:

Bliss v. Lambeth [1978] 1 WLR 382 ***(cit)***
Allen v. Sir Alfred McAlpine & Son Ltd. [1968] 1 All ER 546 ***(refd)***

For the plaintiff - S.Y. Lee; M/s. Mohd Noor & S.Y. Lee
For the defendant - Belinda Wan Yuet Ngor; M/s. Chan & Associates

JUDGMENT

P.S. Gill J:

This is an application by the defendants to dismiss the plaintiff's suit for want of prosecution, and